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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS ANGEL GARCIA,

Defendant and Appellant.

F072447

(Super. Ct. No. BF158753A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John S. Somers, Judge.

Carol Foster, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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Defendant Luis Angel Garcia agreed to plead no contest to second-degree burglary and admit he had a prior serious or violent felony conviction. He also agreed to a four-

*Before Kane, Acting P.J., Detjen, J., and Smith, J.

year prison term. As a result of the plea agreement, other charges and enhancements were dismissed. Appellate counsel could not identify any arguable issues in the case. After a thorough review of the record, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

The information charged Garcia with attempted residential burglary (Pen. Code, §§ 460 and 664¹), misdemeanor resisting arrest (§ 148, subd. (a)(1)), and misdemeanor possession of drug paraphernalia (Health & Saf. Code, § 11364). The burglary count also alleged that (1) a person was home at the time of the attempted burglary making the crime a violent felony pursuant to section 667.5, subdivision (c)(21); (2) Garcia had suffered a prior conviction that constituted a strike within the meaning of section 667, subdivisions (b)-(i); (3) Garcia had previously been convicted of a serious felony within the meaning of section 667, subdivision (a); and (4) Garcia had served two prior prison terms within the meaning of section 667.5, subdivision (b).

The testimony at the preliminary hearing established that the owner of the residence in question reported a prowler to the emergency operator. When police officers arrived at the residence, they found Garcia with a white cloth wrapped around his face. He was standing near a window wearing black gloves, and the window screen was bent outward. Garcia resisted when ordered to the ground by officers but was arrested with the assistance of a K-9 officer.

After the preliminary hearing, defense counsel expressed doubt as to Garcia's competency to stand trial. Garcia was examined by a healthcare professional who concluded he was competent. The parties submitted the matter on the report, and the trial court found Garcia competent to stand trial.

Thereafter, Garcia entered into a plea agreement which required him to plead either guilty or no contest to second-degree burglary, which was added as count 4 to the

¹All statutory references are to the Penal Code unless otherwise stated.

information. Garcia was also required to admit the prior conviction that constituted a strike within the meaning of section 667, subdivisions (b)-(i). In exchange, the prosecutor would dismiss the remaining counts and allegations and Garcia would be sentenced to state prison for a term of four years. Garcia entered the plea as agreed, the remaining counts and allegations were dismissed, and he was sentenced to the agreed-upon term.

DISCUSSION

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, asserting that after reviewing the record she could not identify any arguable issues in the case. By letter dated January 11, 2016, we invited Garcia to inform the court of any issues he wished us to address in this appeal. Garcia did not respond to our letter.

After a thorough review of the record, we agree with appellate counsel that there are no arguable issues in this case. Garcia entered into a plea agreement. He pled to the agreed charge and was sentenced according to the agreement. Garcia completed a “Felony Advisement of Rights, Waiver and Plea Form” prior to entering his plea. The form adequately addressed the rights Garcia was giving up, as well as the consequences of entering a plea. It was initialed in the appropriate places and signed by Garcia and defense counsel.

Garcia’s notice of appeal asserted that he was sentenced incorrectly. This argument is based in part on Garcia’s misunderstanding of his sentence and in part on the trial court’s failure to explain the sentence fully. The agreement required Garcia to plead no contest to the added count 4, second-degree burglary in violation of section 460, subdivision (b). Garcia also admitted he had suffered a prior conviction that constituted a strike within the meaning of section 667, subdivisions (b)-(i). Pursuant to section 667, subdivision (e)(1), the strike admission required the trial court to double the statutory term of imprisonment for the second-degree burglary conviction.

At the sentencing hearing, the trial court simply stated it was sentencing Garcia to the midterm of four years pursuant to the plea agreement. Garcia was actually sentenced to the midterm of two years for the second-degree burglary, which was doubled because of the strike conviction, for a total term of four years.

Garcia's confusion also stems from the fact that he believed the sentencing triad for his conviction was two, four, or six years. Second-degree burglary is a wobbler for which the trial court can impose up to one year in jail, or "imprisonment pursuant to subdivision (h) of Section 1170." (§ 461, subd. (b).) Section 1170, subdivision (h)(1), provides that, where a term is not specified for a crime, the crime is punishable using the 16-month, two-, or three-year sentencing triad. Therefore, the only choice that would allow the trial court to arrive at the agreed-upon prison term of four years was the midterm of two years, which would then be doubled for a total term of four years. This is the sentence that was agreed upon by the parties and imposed by the trial court.

DISPOSITION

The judgment is affirmed.